

SENATE BILL 3607

By Haynes

AN ACT to amend Tennessee Code Annotated, Title 5;
Title 6; Title 7; Title 8; Title 13; Title 27; Title 29
and Title 68, relative to land use.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 27, is amended by adding the following language as a new chapter:

27-10-101.

This chapter shall be known and may be cited as the "Tennessee Land Use Review Act."

27-10-102.

The purpose of this chapter is to provide for the judicial review of local governmental administrative land use decisions by establishing uniform, expedited appeal procedures and uniform criteria for reviewing such decisions, in order to provide consistent, predictable, and timely judicial review. This mechanism is intended to replace the common law writ of certiorari in the appeal of such decisions.

27-10-103.

As used in this chapter, unless the context otherwise requires:

(1) "Administrative board or commission" refers to a local official of any kind who makes administrative land use decisions;

(2) "Administrative land use decision" means an administrative decision made on a record by a local board or commission, including the legislative body, on an application for land use approval or other land use relief, including, but not limited to, an application for a conditional use,

variance, site plan review, planned unit developments, nonconforming properties, and subdivision approval (preliminary or final). The term also includes appeals by neighboring property owners seeking to overturn the issuance of a land use permit or other type of land use approval;

(3) "Aggrieved" means that a land use decision has caused, or is expected to cause, harm or injury to a person, neighborhood or community organization, or governmental unit, distinct from any harm or injury caused to the public generally; and that the asserted interests of the person, organization, or unit are among those the local government is required to consider when it makes the land use decision;

(4) "Application for administrative land use decision" means any application to a local administrative board or commission seeking the issuance or revocation of a land use permit or other land use relief;

(5) "Definitive relief" is specific relief granted by the court to require a particular action by the local government;

(6) "Local government" means a municipal or county government including any county having a metropolitan form of government; and

(7) "Permit or other relief" includes the issuance of a permit or other similar authorization, and also an appeal requesting that a permit or similar authorization be granted, revoked or denied.

27-10-104.

(a) The procedure for judicial review provided by this chapter is the exclusive method for judicial review of administrative land use decisions made by local governments and their administrative officers, boards and commissions, replacing the common law writ of certiorari.

(b) The procedure for judicial review provided by this chapter applies to administrative land use decisions made by the following administrative officers, boards and commissions:

(1) Municipal and county boards of zoning appeals created pursuant to §§ 13-7-106 and 13-7-205;

(2) All types of planning commissions, including municipal, regional, municipal-regional, and community planning commissions created pursuant to §§ 13-3-101, 13-3-102, 13-3-201 and 13-4-101;

(3) Historic zoning commissions created pursuant to § 13-7-403;

(4) Design review committees or commissions created pursuant to § 6-54-133 or § 6-2-201(33);

(5) Stormwater management or flood plain review committees created pursuant to title 68, chapter 221, part 11; and

(6) Local legislative bodies when making administrative land use decisions such as planned unit developments.

(c) The procedure for judicial review provided by this chapter does not replace or apply to:

(1) A petition for writ of mandamus;

(2) A complaint for declaratory and/or injunctive relief claiming that the adoption or amendment of land use regulations is unconstitutional or otherwise invalid; or

(3) A complaint for monetary damages or compensation.

(d) Any person filing a petition for land use review under this chapter may join with that petition any claim excluded from this chapter by subsection (c) and/or a claim under the federal Civil Rights Act, 42 USC §§ 1983 & 1988.

(e) The Tennessee Rules of Civil Procedure shall govern petitions filed under this chapter to the extent that the rules are consistent with the provisions of

this chapter. It is the intent of this chapter that pleadings filed pursuant to this chapter be liberally construed to do substantial justice.

27-10-105.

A person or organization with standing pursuant to § 27-10-108 may obtain judicial review of a land use decision under this chapter by filing a petition for land use review with the circuit or chancery court of the county in which the principal office of the local government is located.

27-10-106.

The trial court shall have jurisdiction over a petition for land use review if the petitioner has exhausted administrative remedies.

27-10-107.

(a) A petition for land use review must be filed within sixty (60) days of the date of the meeting at which the administrative land use decision was made by the board or commission or determined by operation of law, without regard to whether any writing memorializing the decision has been created, entered, or approved.

(b) Where the administrative board or commission permits the filing of a motion for reconsideration or for rehearing, and a timely motion for reconsideration or rehearing has been filed, a petition for land use review must be filed within sixty (60) days of the date of the meeting at which the decision is made on the motion for reconsideration or for rehearing, and not the date of the original decision from which the motion for reconsideration or rehearing was filed, without regard to whether any writing memorializing the decision has been created, entered, or approved.

(c) If the petition is not timely filed, review is barred for lack of subject matter jurisdiction.

27-10-108.

The following persons or organizations have standing to file a petition for land use review under § 27-10-104, or to intervene, pursuant to § 27-10-110(b), in a proceeding for judicial review brought under this chapter:

(1) The applicant for an administrative land use decision and the owner of the property which is the subject of the administrative land use decision;

(2) Any person or organization owning or occupying property adjacent to, across the street from, or within two thousand (2,000) linear feet of a property which is the subject of the land use decision; and

(3) Any other person, neighborhood, community or other organization (whether on its own or as a representative of a member or members), or governmental entity, if aggrieved by the land use decision, or by a possible reversal or modification of the land use decision.

27-10-109.

(a) A petition for land use review shall briefly state the:

(1) Facts demonstrating that the petitioner has standing to seek judicial review under § 27-10-108;

(2) Identity of the local government and the board or commission making the decision;

(3) Substance of the administrative land use decision from which the appeal is taken; a copy of a document memorializing the decision shall be attached, if available;

- (4) Reasons the petitioner claims the decision is erroneous; and
- (5) Type and extent of the relief requested.

(b) The petition shall name the following respondents, as appropriate:

(1) The local government which for purposes of this chapter shall be the corporate identity of the local government and not the individual decision-maker, administrative board, commission or members of the board or commission; and

(2) The applicant for administrative land use decision and the owner of the property if the owner was not the applicant.

(c) The petition may name, as respondents, any other persons or organizations involved in the hearing before the administrative board or commission, who do not join as petitioners.

(d) So long as reasonable notice is provided by the petition, a technical failure to precisely plead any of the matters set out above or name the correct respondent(s) shall not be grounds for dismissal of the petition.

(e) The petition may request attorneys' fees under the Tennessee Equal Access to Justice Act of 1984, compiled in title 29, chapter 37, the Civil Rights Attorneys' Fees Act, 42 USC § 1988, or any other appropriate provision of law.
27-10-110.

(a) All respondents named in the petition desiring to make defense shall do so by filing an answer to such petition within thirty (30) days from the date of the filing of the record, unless the time is extended by order of the court.

(b) Any other person who may be affected by the decision to be made by such court may intervene in the proceedings pursuant to Rule 20 of the Tennessee Rules of Civil Procedure and § 27-10-108.

27-10-111.

The trial court shall provide expedited review of petitions filed under this chapter. Any party may file for summary judgment pursuant to Rule 56 of the Tennessee Rules of Civil Procedure and § 20-16-101.

27-10-112.

(a)

(1) The petitioner or other party may move the court to stay or suspend an action by the local government or another party to implement the administrative land use decision under review. The motion must set forth a statement of grounds for the stay and the factual basis for the motion;

(2) The court may grant the motion for a stay upon such terms and conditions, including the filing of security, as it determines are necessary to prevent the stay from causing harm to other parties; and

(3) The stay may be removed, continued, or modified by the trial court after its final decision pending appeal.

(b)

(1) When a local government has approved a development by a land use decision, or has approved a development with conditions, and a petition for land use review has been filed, the applicant for land use approval or the owner of the land that is the subject of the petition may move the court to order the petitioner to post security as a condition to continuing the proceedings before the court;

(2) The question whether or not such motion should be granted and the amount of the security is within the sound discretion of the court; and

(3) If security is required pending the decision of the trial court, the security may be continued or modified by the trial court pending appeal.

27-10-113.

(a) The local government is responsible for keeping and preparing a record of the proceedings, including a transcript of the hearing held before the administrative board or commission. Within sixty (60) days after service of a petition for land use review, or within such further time as the court allows or as the parties agree, the local government shall submit to the court a certified copy of the record of the land use decision for judicial review.

(b) If the parties agree, or upon order of the court, the record shall be shortened or summarized to avoid reproduction and transcription of portions of the record that are duplicative or not relevant to the issues to be reviewed by the court.

27-10-114.

The review shall be conducted by the court without a jury and shall be confined to the record except that in cases of alleged irregularities in procedure before the administrative board or commission, not shown in the record, the case may be remanded for further proceedings to the administrative board or commission, or discovery as to those issues may be permitted under § 27-10-115 and proof relevant to those issues may be introduced at the hearing in court.

27-10-115.

(a) The parties may not conduct pretrial discovery except with the prior permission of the court, which may be sought by motion at any time after the record is filed.

(b) The court shall not grant permission unless the party requesting discovery makes a prima facie showing of procedural irregularities not documented by the administrative record.

(c) The court shall limit discovery to those matters necessary for equitable and timely review of the issues that the parties seek to raise through the introduction of supplementary evidence as authorized by § 27-10-114.
27-10-116.

(a) The decision of the administrative board or commission shall be upheld unless the decision is:

- (1) Beyond the jurisdiction of the board or commission;
- (2) Illegal;
- (3) Arbitrary and capricious; or
- (4) Fraudulent.

(b) Consistent with the standard of review set out in subsection (a), the court may:

- (1) Dismiss the petition for judicial review, in whole or in part;
- (2) Affirm, modify, or reverse the decision of the administrative board or commission;
- (3)
 - (A) Remand the decision for modification or further proceedings;

(B) If the court remands a land use decision to the board or commission that made the decision, it may require the board or commission to consider additional plans and materials to be submitted by the applicant for the land use approval, and the adoption of alternative regulations or conditions, as the court's order on remand shall prescribe;

(C) If the court remands the land use decision for modification or further proceedings, the court may make such an order as it finds necessary to preserve the interests of the parties and the public, pending further proceedings or action by the local government; or

(4) Or any combination of the above.

(c) The court shall make findings in accordance with Rule 52 of the Tennessee Rules of Civil Procedure.

27-10-117.

If the court reverses a land use decision denying petitioner's application, or approving petitioner's application with conditions, the court may grant the petitioner such definitive relief as the court considers appropriate.

27-10-118.

A grant of definitive or other relief under this chapter does not, by itself, establish liability for compensation or monetary damages, nor does a denial of definitive or other relief under this chapter establish a presumption against liability for compensation or other monetary damages.

27-10-119.

(a) If the court rules in favor of the petitioner, and the petitioner has requested attorneys' fees as part of the relief in the petition under the Tennessee Equal Access to Justice Act of 1984, compiled in title 29, chapter 37, the Civil Rights Attorneys' Fees Act, 42 USC § 1988, or any other applicable provision or rule.

(b)

(1) A motion for fees must be filed by the petitioner within fifteen (15) days of the final judgment specifying;

(2) The judgment and the statute, rule, or other grounds entitling the petitioner to an award of fees; and

(3) The amount sought or a fair estimate of the amount sought.

(c) An affidavit with an itemized statement of the fees shall be submitted in support of the motion.

(d) The court shall give an opportunity for adversary submissions on the motion in accordance with Rule 43.02 of the Tennessee Rules of Civil Procedure.

(e) The court may decide issues of liability for fees before receiving submissions on the value of services.

27-10-120.

(a) The provisions of any private act which provides for judicial review of local administrative land use decisions by the common law writ of certiorari or any mechanism other than this chapter are hereby preempted.

(b) Any municipal ordinance, or county resolution which provides for judicial review of local administrative land use decisions by the common law writ of certiorari or any mechanism other than this chapter are hereby rendered ineffective.

SECTION 2. Tennessee Code Annotated, Section 13-7-409, is amended by deleting the section in its entirety.

SECTION 3. This act shall take effect July 1, 2012, the public welfare requiring it and shall apply to all petitions for land use review filed on or after the effective date of this act.